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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/706,534 | 11/12/2003 | Michael Gorman | G-00016-001 | 6895 |

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| EXAMINER |
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PICKETT, JOHN G

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| ART UNIT | PAPER NUMBER |
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3728

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/706,534

Applicant(s)

GORMAN, MICHAEL

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11, 13 and 17 is/are rejected.
- 7) ☒ Claim(s) 8, 12 and 14-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification appears to provide inadequate antecedent basis for the terminology “means... for maintaining” presented in claim 1. The specification uses the terminology “adjusting” instead of “maintaining” (see page 9, lines 14-21 of the instant application). These are two very different functions. As best can be determined by the examiner, the means for “maintaining” the storage member in a fixed incline position disclosed by the applicant appears to be mere physical interlock at intermittent locations. No new matter may be added.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-6, 9, 10, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown (US 2002/0027091 A1).

Claim 1: By use of the terminology “means... for maintaining said storage member in a selectable fixed incline position”, applicant appears to be invoking the provisions of 35 USC 112, 6th paragraph. However, it must be noted that the specification uses the terminology “adjusting” instead of “maintaining” (see page 9, lines 14-21 of the instant application). These are two very different functions. As best can be determined by the examiner, the means for “maintaining” the storage member in a fixed incline position disclosed by the applicant appears to be mere physical interlock at intermittent locations.

Brown discloses a multifunctional receptacle **10** including a base member **38**, side member **40**, and storage member **12** pivotally connected to side member **40** by means of pivots **20**. The means for maintaining the storage member in a fixed incline position disclosed by the applicant appears to be physical interlock at intermittent locations. Accordingly, Brown discloses means **18** for maintaining said storage member in a selectable fixed incline position that is a functional equivalent to that disclosed by the applicant.

Claim 2: Brown discloses rectangular storage compartment **30**.

Claims 3 and 4: Brown discloses a plurality of circular storage compartments **36**.

Claim 5: Brown discloses rectangular storage compartment **30**.

Claim 6: Brown discloses open utility surface **32**.

Claim 9: Brown discloses handles **42**.

Claim 10: Brown discloses opposing side members **40** (see Figures 2 and 3).

Claim 17: Brown discloses tab **34** capable of functioning as claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Hedges (US 6,564,941).

It is readily apparent that the paint tray is not positively recited in claim 7 and that the hook, as claimed, merely serves to perform the function of retaining the paint tray in any arrangement. Nothing in the claim requires any paint tray retained to be held in such a manner as to enable use, so it appears that any number of hooks would meet the claim requirements.

Accordingly, Hedges discloses a hook 147 for the retention of accessories. It would have been obvious to one of ordinary skill in the art at the time the invention was

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made to provide the receptacle of Brown with a hook as taught by Hedges in order to retain accessories. Such a hook would have been capable of retaining a paint tray.

4. Claims 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Lai (US 6,637,592).

Brown discloses the claimed invention except that Brown uses an aperture for a handle instead of a U-shaped handle. Lai shows that a U-shaped handle was an equivalent structure known in the art. Therefore, because these two handles were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the U-shaped handle of Lai for the apertures of Brown.

Allowable Subject Matter

5. Claims 8, 12, and 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).


Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Greg Pickett
Examiner
28 October 2005


Mickey Yu
Supervisory Patent Examiner
Group 3700